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SIPDIS

OES/ENRC FOR MARK JOHNSEN

E.O. 12958: N/A

TAGS: [ETRD](#) [SENV](#) [EAGR](#) [BTIO](#) [AU](#)

SUBJECT: AMENDED LACEY ACT Q GOA QUESTIONS WTO COMPLIANCE

REF: STATE 126654

¶1. Embassy provided reftel information to contacts in the Ministry of Economy and Labor (MoEL) and the Ministry of Agriculture and Environment. On December 10, Post received a written GOA reply -- on behalf of new Economics Minister Reinhold Mitterlehner and cleared with all relevant GOA agencies -- from MinEcon U.S. desk officer Charlotte Koeberl-Burian (PDF copy emailed to OES/Mark Johnsen).

¶2. The GOA reply:

-- calls into question the WTO compatibility of amended Lacey Act provisions, since they Qonly apply to imported goods and entail an asymmetric treatment of imported products and products sourced inside the U.S."

-- terms new documentation requirements "onerous"

-- asks that implementation be restricted to products more closely linked to timber (excluding for instance musical instruments) and

-- asks for a comprehensive list of affected HTS numbers

¶2. BEGIN TEXT OF GOA REPLY:

The Austrian Federal Ministry of Economics and Labor avails itself of the opportunity to bring to the attention of the United States the following concerns on the implementation of the revised Lacey Act provisions:
Austria is supporting the U.S objective of the Lacey Act to combat trafficking in illegal wildlife, fish and plants and agrees that trade of illegally harvested plants, in particular illegal timber, should be reduced to a minimum.
At the same time we are very concerned about various aspects of the envisaged U.S. measures:

(a) Compatibility with WTO requirements

The provisions of the amended Lacey Act only apply to imported goods and entail an asymmetric treatment of imported products and products sourced inside the U.S. They may therefore be inconsistent with WTO rules and we would be interested in further information regarding the provisions preventing domestic illegal logging activities. If US producers were not subject to equivalent obligations, foreign suppliers would be put at a disadvantage to US producers and WTO principles would be violated.

(b) The scope of the revised Lacey Act provisions
(Proportionality and legal certainty)

The revised Lacey Act provisions impose onerous declaration requirements to products covering most of the chapters of the Harmonized Tariff Schedule. Given the increase in the cost of imports and the delays in trade flows that will follow from the declaration requirements, the measures should be limited to timber and timber products that have a clear and identifiable link to illegal logging. We consider that this link cannot be established in the case of the

products that are to be phased in after September 30, 2009, for musical instruments (HTS chapter 92) and parts of the furniture chapter (HTS chapter 94). We suggest that the first phase should be limited to base wood products of HTS headings 4401 to 4407, as for these the difficulties to get the information required by the declaration would be least burdensome for the importers. To guarantee legal certainty for traders, an exhaustive list of the relevant HTS numbers should be provided for each phase.

(c) Schedule for phasing-in

Austria welcomes the introduction of a phased-in approach regarding the enforcement of the declaration requirements. We consider, however, that longer phase-in periods (at least nine months per phase) are necessary to ensure that importers have sufficient time to get accustomed to the new system and to provide the necessary information needed for the declaration. Business communities need clarity regarding the details of the system at the beginning of the phase-in. Austria understands that there is still quite some definition work to be done and implementation provisions to be decided on. We suppose that this goes also for the question, how an importer can or has to prove the correctness of his declaration and for the question, what constitutes a violation of the revised Lacey Act provisions that may entail civil or criminal charges or forfeiture.

The Austrian Federal Ministry of Economics and Labor hopes that the US authorities will take into consideration the above concerns and will take a careful, measured approach,

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consistent with international obligations, towards implementation of the revised Lacey Act provisions.

END TEXT OF GOA REPLY.

GIRARD-DICARLO